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Paper No. 8

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OFFICE OF PETITIONS

In re Application of :  
Stangel et al :DECISION DISMISSING PETITION  
Application No. 10/074,051 :FOR SUSPENSION OF RULE  
Filed: March 14, 2002 :  
Attorney Docket No. 7374/472586 :

This is a decision on the communication entitled "Non-Publication Request," filed on May 13, 2002, which is being treated as a petition requesting that the requirement of 37 CFR 1.213(a)(1) be waived or suspended pursuant to 37 CFR 1.183 in order to file a nonpublication request after the filing of the above-identified application. This is also in response to the communication filed March 14, 2002 and the "Supplemental Response to Notice to File Corrected Application Papers," filed May 13, 2002, which latter communication is being treated as a petition under 37 CFR 1.182 to accord a filing date of March 14, 2002, the date a complete set of application papers was presented to the USPTO.

The petition under 37 CFR 1.183 to accept a request for nonpublication after filing is dismissed.

The petition under 37 CFR 1.182 to accord the application a filing date of March 14, 2002 is granted.

**PETITION UNDER 37 CFR 1.183**

Turning first to the petition to waive the requirement of 37 CFR 1.213(a)(1), 37 CFR 1.183 provides that in an extraordinary situation, when justice requires, any requirement of the regulations which is not a requirement of the statutes may be

suspended or waived by the Commissioner. 35 U.S.C. 122(b) requires the United States Patent and Trademark Office (USPTO) to publish utility and plant applications filed on or after November 29, 2000, unless applicant makes a nonpublication request upon filing. The requirement that a nonpublication request must be made upon filing of the application is set forth in the statute. See 35 U.S.C. 122(b)(2)(B)(i). Therefore, the USPTO does not have the authority to waive this requirement. Accordingly, the nonpublication request filed with the petition will not be recognized. The projected publication date of this application will be determined upon completion of the pre-examination processing of this application.

If applicant desires to avoid publication of the above-identified application, he may file a continuation application under 37 CFR 1.53(b) claiming benefit to the above-identified application under 35 U.S.C. § 120 with a nonpublication request and, thereafter, abandon the above-identified application by filing a petition under 37 CFR 1.138(c) for express abandonment to avoid publication, including a petition fee (\$130.00). This petition should be mailed to Box PGPUB-ABD or fax to the Pre-Grant Publication Division at (703) 305-8568.

#### **PETITION UNDER 37 CFR 1.182**

This application was deposited on February 14, 2002. However, the USPTO mailed a Notice to File Corrected Application Papers" on March 12, 2002, requiring the submission of a substitute specification and stating that pages 9, 21 and 22 of the specification were missing.

In response to the statement in the Notice that pages 9, 21, and 22 were missing, petitioner, on March 14, 2002, submitted missing pages 9, 21 and 22 of the specification. The response of March 14, 2002 stated that, since the parent application was still pending, "entry of the enclosed duplicate pages will mean that this application is co-pending with the parent application as required by 35 U.S.C. § 120." In view of this statement, the communication is being treated as a petition under 37 CFR 1.182 to accept the later filing date of March 14, 2002.

Petitioner makes the assertion, in both the communication of March 14, 2002, and again in the May 13, 2002 communication, that the application was complete as filed. However, petitioner has not supplied any evidence in support thereof, i.e., stamped return postcard which acknowledges receipt by the USPTO of the number of pages of the specification submitted on the date of filing.

Therefore, since it appears that petitioner does not wish to, or cannot, present evidence in support of the receipt in the USPTO of the pages stated to be missing by the Notice of March 12, 2002, and since it appears that petitioner will accept the later filing date of March 14, 2002, as the date of filing of a complete application, this application will be accorded the later filing date of March 14, 2002 under the provisions of 37 CFR 1.182.<sup>1</sup>

In view of the treatment of this petition as one under the provisions of 37 CFR 1.182 for a later filing date, the \$130 fee required therefor will be charged to Deposit Account No. 06-1135.

Receipt is acknowledged of the substitute specification on May 13, 2002, in response to the Notice of March 12, 2002.

Telephone inquiries regarding this communication should be directed to Frances Hicks at 703-305-8680.

This application is being forwarded to the Office of Initial Patent Examination Division for processing with a filing date of March 14, 2002 and for mailing of a corrected Filing Receipt, which will also include the projected publication date for this application.



Brian Hearn  
Senior Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>1</sup> A review of Office PALM computer database records indicate that Parent Application No. 09/391,377 is still pending. Therefore, even with the March 14, 2002 filing date, this application is copending with the parent application.